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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11
12 Case No. **2010-663**

13 In the Matter of the Accusation Against:

14 JESSICA ELIZABETH DARNELL
426 Warwick Road
Clinton, MS 39056

ACCUSATION

15 Registered Nurse License No. 687766

16 Respondent.

17
18
19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
23 of Consumer Affairs.

24 2. On or about August 29, 2006, the Board of Registered Nursing issued Registered
25 Nurse License Number 687766 to Jessica Elizabeth Darnell (Respondent). The Registered Nurse
26 License was in full force and effect at all times relevant to the charges brought herein and will
27 expire on December 31, 2011, unless renewed.
28

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

6. Section 2811(b) of the Code states:

Each such license not renewed in accordance with this section shall expire but may within a period of eight years thereafter be reinstated upon payment of the biennial renewal fee and penalty fee required by this chapter and upon submission of such proof of the applicant's qualifications as may be required by the board, except that during such eight-year period no examination shall be required as a condition for the reinstatement of any such expired license which has lapsed solely by reason of nonpayment of the renewal fee. After the expiration of such eight-year period the board may require as a condition of reinstatement that the applicant pass such examination as it deems necessary to determine his present fitness to resume the practice of professional nursing.

STATUTORY PROVISIONS

7. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct

8. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a

1 licensed physician and surgeon, dentist, or podiatrist administer to himself or herself,
2 or furnish or administer to another, any controlled substance as defined in Division 10
(commencing with Section 11000) of the Health and Safety Code or any dangerous
3 drug or dangerous device as defined in Section 4022.

4 ...

5 (e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries
6 in any hospital, patient, or other record pertaining to the substances described in
7 subdivision (a) of this section."

8 9. Health and Safety Code section 11170 states that no person shall prescribe,
9 administer, or furnish a controlled substance for himself.

10 10. Health and Safety Code section 11173, subdivision (a) states:

11 No person shall obtain or attempt to obtain controlled substances, or procure or
12 attempt to procure the administration of or prescription for controlled substances (1)
13 by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a
14 material fact.

15 11. Health and Safety Code section 11350, subdivision (a)(1) states:

16 Except as otherwise provided in this division, every person who possesses (1) any
17 controlled substance specified in subdivision (b) or (c), or paragraph (1) of
18 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
19 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
20 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
21 substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
22 the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to
23 practice in this state, shall be punished by imprisonment in the state prison.

24 COST RECOVERY

25 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
26 administrative law judge to direct a licensee found to have committed a violation or violations of
27 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
28 enforcement of the case.

29 DRUG

30 13. Norco, a brand name for hydrocodone with acetaminophen, is a Schedule II
31 controlled substance pursuant to Health and Safety Code Section 11055(b)(1)(j) and a dangerous
32 drug per Business and Professions Code section 4022.

FACTUAL ALLEGATIONS

14. Respondent was employed by Med Source Professional Personnel as a traveling nurse and was given a two day assignment as a Registered Nurse in the Intensive Care Unit (ICU) of Sharp Coronado Hospital, beginning December 13, 2008 and ending December 14, 2008. During her shift, Respondent diverted medication from patients as follows:

15. Patient A

a. On December 13, 2008, Respondent was assigned to this patient. This patient had a NPO (nothing by mouth) medical instruction. The patient had no physician orders for Hydrocodone (Norco).

b. On December 13, 2008 at 0809 hours, Respondent withdrew from the Pyxis¹ by override 2 tablets of Hydrocodone/Norco 10mg/325 mg. There is no indication in the patient's medical administration record (MAR) that the medication withdrawn by Respondent was administered to the patient. There is no record of wastage for the medication withdrawn by Respondent. Two tablets of Hydrocodone/Norco 10mg/325 mg. are unaccounted for.

c. On December 13, 2008 at 1229 hours, Respondent withdrew from the Pyxis by override 2 tablets of Hydrocodone/Norco 10mg/325 mg. There is no indication in the patient's MAR that the medication withdrawn by Respondent was administered to the patient. There is no record of wastage for the medication withdrawn by Respondent. Two tablets of Hydrocodone/Norco 10mg/325 mg. are unaccounted for.

d. On December 13, 2008 at 1713 hours, Respondent withdrew from the Pyxis by override 2 tablets of Hydrocodone/Norco 10mg/325 mg. There is no indication in the patient's MAR that the medication withdrawn by Respondent was administered to the patient. There is no

¹ Pyxis is a trade name for the automatic single-unit dose medication dispensing system that records information such as patient name, physician orders, date and time medication was withdrawn, and the name of the licensed individual who withdrew and administered the medication. Each user/operator is given a user identification code to operate the control panel. Sometimes only portions of the withdrawn narcotics are given to the patient. The portions not given to the patient are referred to as "wastage." This waste must be witnessed by another authorized user and is also recorded by the Pyxis machine.

1 record of wastage for the medication withdrawn by Respondent. Two tablets of
2 Hydrocodone/Norco 10mg/325 mg. are unaccounted for.

3 e. On December 14, 2008 at 1423 hours, Respondent withdrew from the Pyxis by
4 override 2 tablets of Hydrocodone/Norco 10mg/325 mg. There is no indication in the patient's
5 MAR that the medication withdrawn by Respondent was administered to the patient. There is no
6 record of wastage for the medication withdrawn by Respondent. Two tablets of
7 Hydrocodone/Norco 10mg/325 mg. are unaccounted for.

8 16. Patient B

9 a. Respondent was not assigned to this patient.

10 b. On December 14, 2008 at 1801 hours, Respondent withdrew 2 tablets of
11 Hydrocodone/Norco 10/325 mg. from the Pyxis machine for this patient. Respondent failed to
12 document administration of this medication and there is no record of wastage.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct – Obtain Controlled Substances Unlawfully)**

15 17. Respondent is subject to disciplinary action for unprofessional conduct under section
16 2762(a) for obtaining and possessing controlled substances unlawfully in violation of Health and
17 Safety Code sections 11173(a) and 11350(a)(1) as is more particularly set forth in paragraphs 14
18 through 16 above, and incorporated herein as though set forth in full.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct - Falsify or Make Grossly Incorrect or Inconsistent Entries)**

21 18. Respondent is subject to disciplinary action for unprofessional conduct under Code
22 section 2762(e) for falsifying or making grossly incorrect, inconsistent and/or unintelligible
23 entries in the hospital records by withdrawing medication from the Pyxis machine, charging the
24 withdrawal to patients who did not receive the drugs or for whom Respondent did not document
25 administration or wastage of the drug as is more particularly set forth in paragraphs 14 through 16
26 above, and incorporated herein as though set forth in full.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 687766, issued to Jessica Elizabeth Darnell.

2. Ordering Jessica Elizabeth Darnell to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: _____

01/25/10

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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